

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 650 of 1992

with

CRIMINAL APPEAL No 403 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

and

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BALDEVJI NANAJI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 650 of 1992
MR VIJAY H PATEL for appellant No. 1
Mr K P Raval, APP for Respondent No. 1
 2. Criminal Appeal No. 403 of 1993
Mr K P Raval for the appellant
MR VIJAY H PATEL for Respondent No. 1
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CORAM : MR.JUSTICE B.J.SHETHNA

and

MR.JUSTICE D.P.BUCH

Date of decision: 28/11/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.J.SHETHNA)

Both these appeals are arising out of a common judgment and order dated 15.7.1992 passed by the learned Addl.Sessions Judge, Ahmedabad (Rural) in Sessions Case No.18/92 whereby the learned Judge found the original accused no.4-Baldevji Nenaji guilty for the offence punishable under section 302 of IPC and sentenced him to suffer life imprisonment but acquitted three other accused i.e. accused No.1, 2 and 3-Laxmanji Mohanji, Bhemaji Revaji and Shivaji Nenaji respectively for the major offence punishable under section 302 of IPC. However, the learned Judge found all the three accused guilty for the offence punishable under section 323 of IPC and sentenced them to suffer six months' R.I.

2. The aforesaid order of conviction and sentence passed by the learned Judge is challenged by the appellant accused-Baldevji Mohanji-original accused no.4 by way of Criminal Appeal No.650/92 but the order of conviction and sentence passed by the learned Judge against rest of the accused convicting them for the offence punishable under section 323 of IPC is not challenged by them. However, the State of Gujarat has challenged their order of acquittal for the major offence punishable under section 302 read with section 34 of IPC in Criminal Appeal No.403/93.

3. It is the prosecution case that on 7.10.1991, Kantiji Pujaji, PW 2, Exh.13, Motiji Bave, PW 3, Exh.14, Hamir Moti, PW 4, Exh.15 and one Bhupat Manga and Dhulabhai were going in a camel cart which was driven by Dhulabhai Othabhai. At about 6 p.m. when they were going towards Rakhial, at that time, when they reached near Najupura Kharabani border, they saw one Gabhaji Motiji coming running from Karmipura, chased by all the four accused - (1) Laxmanji Mohanji, (2) Bhemaji Revaji, (3) Shivaji Nenaji and (4) Baldevji Nenaji. All the four accused were armed with sticks. Accused No. 4-Baldevji gave a full forced blow with stick on the head of Gabhaji. Because of that Gabhaji fell down and thereafter all the accused started beating him with sticks and also given fists and kicks. All the witnesses told the accused not to beat Gabhaji but they did not listen to them and said that if they would intervene then, they would also meet with the same fate of Gabhaji. Because of that all the witnesses left the place of incident. Thereafter, PW 2 Kantiji Pujaji went to the

house of deceased Gabhaji and informed about the incident to Shardaben, wife of Tekhaji Motiji, who is the brother of Gabhaji in the evening at 7 p.m.

4. It is further the case of the prosecution that neither Tekhaji, husband of Shardaben nor his younger brother Jalaji were present at the house of Shardaben. Therefore, on the next day morning Shardaben went to Village Gadhi to call her younger brother-in-law and then went to see the dead body of Gabhaji. When they were thinking to reach the police station, by that time police had come there for bando=bast during Navratri. Therefore, in the village itself she lodged complaint before the police about the incident against all the accused.

5. After investigation, the police arrested all the accused and submitted charge-sheet against them for the offences punishable under section 302 read with section 34 of IPC. All the accused pleaded not guilty to the charge and claimed to be tried. Thereafter, the prosecution examined as many as three eye witnesses:

- (i) Kantiji Pujaji, PW 2
- (ii) Motiji Bave, PW 3
- (iii) Hamir Motiji, son of Motiji, PW 4

To prove the injury, prosecution has examined Dr. Satishsingh, PW 1, Exh.11. All the three witnesses have clearly stated in their evidence that at about 6 p.m. when they were going towards the village, they saw deceased Gabhaji running towards them, chased by all the four accused armed with sticks and accused No.4 Baldevji gave stick blow with full force on the head of Gabhaji. Because of that Gabhaji fell down and thereafter all the three remaining accused started beating Gabhaji with sticks. They have given evidence in a most natural manner. All of them were rustic villagers. Shardaben has lodged FIR but neither her husband nor her husband's brother were present in the village. Before she could go to the police station next day, police was already there for 'Navratri bando-bast'. Therefore, she gave complaint before the police in the village itself.

6. Learned Counsel Mr Vijay Patel took us through the evidence of all the eye witnesses and submitted that their evidence is not reliable because there was no need for Bhupat to go with weapons and come back. We fail to understand what difference it would make. It is hardly of any importance if Bhupat had gone with weapons or not.

As stated earlier, the witnesses were neither closely related to the accused nor to the deceased. They were not hostile to the accused. They had simply witnessed the incident which they had reported to Shardaben who was sister-in-law of deceased Gabhaji.

7. Mr Vijay Patel further submitted that as per the say of the witnesses they were in all six and strongly built whereas out of the four accused, one accused was of aged 65 years and another accused was having only one hand. He, therefore, submitted that six persons could have very well therefore, submitted that the witnesses could have overpowered four accused persons. Their version that they were threatened, therefore, they left the scene of offence, shows that their evidence is not reliable. It is true that they were in all six but nobody would unnecessarily like to take more cudgels with the persons armed with weapons, particularly when the victim was not closely related to them. At the most they would request not to beat the deceased further and actually they did. Merely because they have not taken any further cudgel with the accused, that would not mean that their evidence was not reliable. In absence of any suggestion that they were hostile to the accused, we are not prepared to discard their evidence, if their evidence is otherwise found trustworthy and reliable.

8. Under the circumstances, we are of the considered opinion, their evidence is rightly relied upon by the learned trial Judge for convicting the accused.

9. This brings us to the question as to whether the learned Judge wrongly acquitted the remaining three accused for major offence punishable under section 302 of IPC. It is true that all the four accused chased the deceased Gabhaji, but only accused no.4 who was youngest among them had chosen the vital part of the body i.e. head and gave stick blow with full force on the head of deceased Gabhaji. Because of that Gabhaji died whereas all the three accused have not inflicted injuries on the vital part of the body of the deceased, the deceased had received in all five injuries, out of them only one is sufficient in ordinary course to cause death. That injury has been attributed to accused No.4-Baldevji. In that case, it cannot be said that the learned Judge was wrong in acquitting the remaining three accused for the major offence punishable under Section 302 of IPC. In our considered opinion, the learned Judge was right in acquitting them for the offence punishable under Section 302 of IPC and convicting accused No.4-Baldevji for offence punishable under section 302 of IPC.

10. In view of the above discussion, both these appeals fail and are hereby dismissed.

28.11.2001 [B J Shethna, J.]

[D P Buch, j]
msp